IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b)

Description of Case

Crl. Mise. Application No. 455 of 2006

Date of decision:-23-6-2006

Not approved for reporting

Date:- 23-6-2006 Initials of Judge

Note: - Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL ,AT NAINITAL

Criminal Misc. Application No. 455 of 2006

Mohd. Bashir S/o Kalu
R/o Village Peli Parao
Pargana Najibabad Tehsil &
District Haridwar ….Applicant

Versus

1. State of Uttaranchal
2. Mohd. Bashir S/o Noor Ahmad
   R/o Village Pilli Parao
   Tehsil and District Haridwar …..Respondents

Ms. Menka Tripathi learned counsel for the applicant.
Sri Amit Bhatt learned A.G.A. for the State.

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the chargesheet, dated 23.04.2006 and summoning order dated 27.05.2006 passed by the Judicial Magistrate, Haridwar in case No. 414/2006 State Vs. Mohd. Bashir.

2. Brief facts of the case are that on 17.02.2006 an FIR was lodged at police station Shyampur, District Haridwar against the applicant alleging therein that the applicant has wrongly alleged himself the owner of a land and sold it fraudulently to another person by way of an agreement. The police investigated the matter and submitted the chargesheet. The learned Magistrate took cognizance against the applicant vide order dated 27.05.2006 Feeling aggrieved by this, the applicant preferred the present petition.

3. Learned counsel for the applicant contended that the revenue authority has issued a kisan-bahi in the name of present applicant and the name of the applicant's father was wrongly entered as 'Noor Ahmed'

instead of ‘Kalu’. It was contended that the applicant had made several requests to the revenue authority but no heed was paid. When the name was not corrected the present FIR was lodged against the applicant. It was contended that the applicant is the owner of the said property and he had not misrepresented himself to be respondent no. 2. Learned AGA refuted the contention. The I.O. investigated the matter and after concluding the investigation he found that the applicant had affixed the photograph impersonating himself to be respondent no.2 it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. This court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. The high court should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material.

4. In the instant case, there is sufficient evidence on record at present to prove that the applicant had impersonated himself to be the respondent no. 2 and executed an agreement in favour of one-Om Prakash. The applicant has challenged the impugned order on the ground that the said land belongs to him. This court cannot evaluate the disputed facts of the case. This Court cannot decide as to whether the evidence is reliable or not. It has been held by the Hon'ble Apex Court in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases: that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002 (2) SBR p/151** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

5. In view of the above, the petition lacks merit and is dismissed. All the pending miscellaneous application (s) in this case, if any, shall stand disposed of accordingly.

(J.C.S.Rawat,J.)

Dated 23.06.2006

LSR